

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 17 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0325-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
OMAR NAVARRO AMAVISCA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063243

Honorable Terry L. Chandler, Judge

REVIEW GRANTED; RELIEF DENIED

John William Lovell

Tucson
Attorney for Petitioner

K E L L Y, Judge.

¶1 Omar Amavisca petitions this court for review of the trial court's summary denial of his petition for post-conviction relief brought pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Amavisca was convicted after a jury trial of first-degree burglary and three counts each of armed robbery, kidnapping, and aggravated assault with a deadly weapon. The trial court sentenced him to a combination of consecutive and concurrent, presumptive prison terms totaling twenty-one years. We affirmed Amavisca's convictions and sentences on appeal. *State v. Amavisca*, No. 2 CA-CR 2007-0267 (memorandum decision filed Mar. 17, 2009).

¶3 Amavisca filed a notice and petition for post-conviction relief, claiming his trial counsel had been ineffective in failing to adequately argue that his incriminating statements to police should be suppressed. Amavisca claimed that, because he speaks only Spanish and has a limited education, his trial counsel should have more thoroughly presented a claim that his waiver of his right to remain silent was involuntary due to a language barrier and incorrect or biased translation of the *Miranda*¹ warnings given by a Spanish-speaking police officer. He also asserted his trial counsel should have further developed an argument that, due to Amavisca's unfamiliarity with the criminal justice system and his limited education, he did not understand the rights he purportedly had waived. Finally, he maintained counsel should have developed an argument that, due to

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

his history and injuries sustained during his arrest, Amavisca was more susceptible to coercion by the interviewing officers.²

¶4 The trial court summarily denied relief, observing that “aside from pointing out what additional work his trial counsel could have done, [Amavisca] fails to show how what his counsel did do fell below the professional standards of legal representation.” The court also determined that Amavisca had failed to show resulting prejudice because, even if trial counsel had raised the arguments Amavisca contended he should have, it was “highly unlikely that . . . the outcome [of his motion to suppress] would have been any different.”

¶5 On review, Amavisca essentially repeats the same arguments made below and does not identify any factual or legal error in the trial court’s ruling. Most importantly, he does not address the court’s determination that he had not demonstrated his trial counsel’s conduct fell below prevailing professional norms. *See State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) (“To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.”). He instead asserts, without citation to evidence or authority, that because his trial counsel was “experienced” and “represents Spanish-speaking defendants,” he would have been

²Amavisca included with his petition an affidavit by a clinical psychologist discussing, inter alia, Amavisca’s intelligence and education, as well as a document prepared by a court interpreter identifying purported inaccuracies in the translation of the Spanish portions of Amavisca’s police interview.

aware of these arguments and his representation, therefore, “clear[ly] . . . fell far below the minimum standards set forth by Arizona courts.”

¶6 But Amivisca’s speculative, unsupported assertion is insufficient to establish a colorable claim of ineffective assistance of counsel. *See State v. McDaniel*, 136 Ariz. 188, 198, 665 P.2d 70, 80 (1983) (claimant bears burden of establishing ineffective assistance of counsel and “[p]roof of ineffectiveness must be a demonstrable reality rather than a matter of speculation”); *see also State v. Donald*, 198 Ariz. 406, ¶ 21, 10 P.3d 1193, 1201 (App. 2000) (to warrant evidentiary hearing, Rule 32 claim “must consist of more than conclusory assertions”). The Sixth Amendment does not entitle a defendant to mistake-free representation, *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147 (2006), and a defendant therefore is “not guaranteed perfect counsel, only competent counsel,” *State v. Valdez*, 160 Ariz. 9, 15, 770 P.2d 313, 319 (1989), *overruled on other grounds by Krone v. Hotham*, 181 Ariz. 364, 890 P.2d 1149 (1995). The failure to more fully develop an argument, without more, does not establish that counsel was not competent.

¶7 Based on our review of Amavisca’s petition for post-conviction relief and the trial court’s ruling, we conclude the court correctly rejected Amavisca’s claim in a thorough and well-reasoned minute entry; we therefore adopt the court’s ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has ruled correctly on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶8

Although we grant review, relief is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge